

CITY BOARD OF ZONING APPEAL #06005

DATE SCHEDULED FOR PUBLIC HEARING: April 28, 2006

LOCATION: Approximately three blocks south of the intersection of North 40th and Superior Streets.

ADDRESS: 4010 Jersey Circle

LEGAL DESCRIPTION: Lot 2, Sunset Acres 6th Addition

ZONING: R-2 Residential

EXISTING LAND USE: Single-family Residential

SURROUNDING LAND USE AND ZONING:

North:	Single-family Residential	R-3
South:	Single-family Residential	R-2
East:	Single-family Residential	R-2
West:	Single-family Residential	R-2

TYPE OF APPEAL:

THIS APPEAL IS DIRECTED TO THE BOARD RELATIVE TO A VARIANCE.

1. Lincoln Municipal Code (LMC) Section 27.13.080(a) requires a rear yard setback of 30' or 20% of the lot depth. A variance to the rear yard setback from 18' 8" to 10' is requested.
2. Lincoln Municipal Code (LMC) Section 27.13.080(a) requires a side yard setback of 5'. A variance to the side yard setback from 5' to 4' 10.8" is requested.

STAFF FINDINGS:

1. The subject property is located at 4010 Jersey Circle and is zoned R-2.
2. The applicant is seeking to rebuild an existing covered deck on the rear of the house to convert it into an enclosed sunroom. The building permit review noted that the proposed construction constituted an addition onto the house, and as such it is required to comply with the setbacks for a principal structure in the R-2 zoning district. The building permit review also noted that the existing residence does not comply with the required 5' side yard setback along the west property line.

3. A survey was submitted as part of the application noting the two items of noncompliance. This appeal addresses them in two variance requests. The first is a variance to the rear yard setback from 18' 8" to 10' to allow the sunroom. The second is a variance to the side yard setback from 5' to 4' 10.8" to allow the existing residence. It is noted that there is a conflict in the application materials submitted. The application form correctly states the rear yard setback variance request, but does not include the side yard setback request. Attachment 1 to the application incorrectly states the rear yard variance request, but also includes and correctly states the side yard variance request.
4. The building permit for the residence was issued in 1979. At that time, LMC Section 27.71.110 stated that "uncovered porches which do not extend more than 3' **above the floor level of the ground (first) story** may project into a required side or rear yard." In 1981, this provision was modified to state "uncovered porches which do not extend more than 3' **above or below the ground level** may project into a required side or rear yard." Constructed as part of the house in 1979 the deck complied with the Zoning Ordinance, but was made nonconforming when the ordinance was amended in 1981.
5. It is unknown when the deck was covered (see attached photograph) as a building permit was not issued. At the time the cover was installed however, the deck then became part of the house and was treated the same as the house for purposes of yard setbacks. At that point, the house encroached into a required yard and violated the rear setback. If the owner had applied for a building permit at the time the deck was enclosed, it would not have been approved.
6. At 4' 10.8" from the lot line, the house is 1.2" from complying with the required 5' side yard setback. The deficiency appears to be a measurement error at the time the house was built. Minor discrepancies such as this are not uncommon when dimensions are re-measured using the highly accurate surveying instruments in use today.
7. The lot is located on a cul-de-sac in a residential development and is zoned R-2. The lot abuts the 60'-wide Turner drainage ditch on the north, and is surrounded by residential uses on all other sides. The lot is slightly irregular in shape, but it is due to the fact it is located on a cul-de-sac, and in that regard it is not unusual and is like many other lots throughout the city also located on cul-de-sacs.
8. The Board of Zoning Appeals is empowered to grant variances "to the extent necessary to permit the owner a reasonable use of the land in those specified instances where there are peculiar, exceptional and unusual circumstances in connection with a specific parcel of land, which circumstances are not generally found within the locality or neighborhood concerned."

9. It appears that the property owner has reasonable use of their property without a variance to the rear yard setback. If this rear setback appeal is denied, the property owner will not be allowed to construct the proposed sunroom which encroaches into the required rear yard.
10. The side yard encroachment was only identified as a result of the survey required as part of this application to document the rear setback to the deck. It appears to be the result of a measurement error on the part of the contractor when the house was built, and not an attempt to circumvent the required setback. If the variance to the side yard setback is not granted, the house will not be allowed to encroach into the required side yard.

Prepared by

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Planner
April 19, 2006

**APPLICANT/
OWNER:**

Kirk Nelson
4010 Jersey Circle
Lincoln, NE 68504



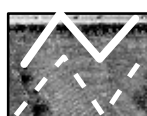
Board of Zoning Appeals #06005 4010 Jersey Circle

2005 aerial

Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
Sec. 8 T10N R7E



Zoning Jurisdiction Lines

City Limit Jurisdiction

